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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/863,801	05/22/2001	Tom Van Horn	22930-06067	8921
758	7590	12/19/2005		
FENWICK & WEST LLP SILICON VALLEY CENTER 801 CALIFORNIA STREET MOUNTAIN VIEW, CA 94041			EXAMINER GORT, ELAINE L	
			ART UNIT	PAPER NUMBER
			3627	

DATE MAILED: 12/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/863,801

Applicant(s)

VAN HORN ET AL.

Examiner

Elaine Gort

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 12-36 is/are pending in the application.
- 4a) Of the above claim(s) 13-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 12 and 21-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/25/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. In view of the Appeal Brief filed on 10/13/05, PROSECUTION IS HEREBY REOPENED. As set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claim 36 is rejected because it lacks patentable utility. Claim 36 claims the manipulation of data but performs no concrete, useful or tangible result.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-9, 12, and 21-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Halbert et al. (US Patent 6,101,484) in view of Restatement of the Law, Second; Contracts 2d.

Halbert et al. discloses the claimed method including communications and an agreement between the management system and a supplier to sell the supplier's products in a co-op for a period of time and for a varying price depending upon the quantity sold (for example see Abstract, paragraphs beginning on line 4 of column 3, line 10 column 4 and line 24 column 10) but is not specific regarding the agreement between the management system and the supplier being an option contract. Restatement of the Law, Second; Contracts 2d discloses that it is notoriously old and well known in the art of business agreements to use option contracts to ensure buyers that products will be supplied by a seller when the buyer opts to purchase them based on the agreed to terms of the buyer and the seller. Note that Examiner construes wholesalers, brokers, middlemen, etc... in a supply chain to be "buyers" of goods from suppliers. Examiner notes that Halbert et al. discloses the supplier and the management system working together to promote and sell the supplier's goods based

upon predetermined criteria which appears to meet the parameters of an option contract, and in effect may be an option contract, but does not disclose specifically or clearly the details of the agreements made between the management system and the supplier. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the method for sourcing a featured item for an on-line group-buying sale of Halbert et al. with an option contract as taught by Restatement of the Law, Second; Contracts 2d, in order to ensure the management system that products will be supplied by a seller when the management system finds qualified buyers and opts to purchase them based on the agreed to terms between the buyer and the seller.

Halbert et al. discloses a method for sourcing a featured item for an on-line group-buying sale (for example column 1 line 20) comprising:

Communication with a supplier including a featured item quantity and a featured item time reservation and obtaining suppliers consent to reserve the featured item quantity for a time period for sale (for example column 3 line 10; column 10 line 24; column 4 line 10; column 10 line 24);

Conducting an on-line group-buying sale for the featured item quantity and the negotiated featured item time reservation (for example column 9 line 35 and column 9 line 43);

Sending shipment instructions to the supplier regarding featured items sold in the on-line group-buying sale (for example column 9 line 42 and column 9 line 50);

Providing the supplier with consideration (Examiner construes consideration to be an act or forbearance of promise thereof done or given by one party in return for the act or promise of another, and therefore construes that the seller is provided consideration by the management system when the management system agrees, or “promises” to promote the seller’s goods via the disclosed on-line system based on the cost curves (100) and minimum price curves (102) shown in figures 3A-E, which the Examiner construes to be reserve prices.); and

Receiving consideration from the supplier (seller) in exchange for executing the binding agreement (Examiner construes consideration to be an act or forbearance of promise thereof done or given by one party in return for the act or promise of another, and therefore construes that the management system is provided consideration from the supplier when the supplier agrees, or “promises” to supply their goods to buyers which the management system provides via the disclosed on-line system based on the agreed to cost curves (100) and minimum price curves (102) shown in figures 3A-E, which the Examiner construes to be reserve prices.).

Response to Arguments

6. Applicant's arguments with respect to claims 1-9, 12, and 21-36 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elaine Gort whose telephone number is 571/272-6781. The examiner can normally be reached on Tuesday and Friday.

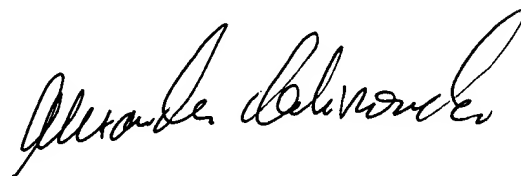
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on 571/272-6771. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Elaine Gort
Examiner
Art Unit 3627

December 8, 2005



ALEXANDER KALINOWSKI
SUPERVISORY PATENT EXAMINER